

1 Michael Lee Hertzberg  
740 Broadway @ Astor, 5th Floor  
2 New York, NY 10003-9518  
(212) 674-4614  
3

4 Andrew H. Wilson, SBN #063209  
WILSON, RYAN & CAMPILONGO  
115 Sansome St., 4th Floor  
5 San Francisco, California 94104  
(415) 391-3900  
6 Telefax: (415) 954-0938

7 Laurie J. Bartilson, SBN #139220  
BOWLES & MOXON  
8 6255 Sunset Boulevard, Suite 2000  
Hollywood, CA 90028  
9 (213) 463-4395  
Telefax: (213) 953-3351  
10

11 Attorneys for Plaintiff CHURCH OF SCIENTOLOGY  
INTERNATIONAL

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF MARIN

14	CHURCH OF SCIENTOLOGY	)	CASE NO. 157 680
15	INTERNATIONAL, a California not-	)	
15	for-profit religious corporation;	)	[AND LASC NO. BC 052395]
16		)	
16	Plaintiffs,	)	<b>CONSOLIDATED</b>
17		)	
17	vs.	)	DECLARATION OF LAURIE J.
18		)	BARTILSON IN SUPPORT OF
18	GERALD ARMSTRONG; MICHAEL WALTON;	)	CHURCH OF SCIENTOLOGY
19	et al.,	)	INTERNATIONAL'S OPPOSITION
19		)	TO ARMSTRONG'S EX PARTE
20	Defendants.	)	APPLICATION TO CONTINUE
20		)	HEARING ON PLAINTIFF'S
21	CHURCH OF SCIENTOLOGY	)	MOTION FOR SUMMARY
21	INTERNATIONAL, a California not-	)	ADJUDICATION
22	for-profit religious corporation;	)	
22		)	
23	Plaintiffs,	)	
24		)	
24	vs.	)	DATE: December 8, 1994
25		)	TIME: 9:30 a.m.
25	GERALD ARMSTRONG; THE GERALD	)	DEPT: 1
26	ARMSTRONG CORPORATION, a	)	
26	California corporation; Does 1 -	)	
27	25 INCLUSIVE	)	TRIAL DATE: May 18, 1994
27		)	
28	Defendants.	)	

RECEIVED

DEC 08 1994

HUB LAW OFFICES



1 I, LAURIE J. BARTILSON, hereby depose and state:

2 1. I am an attorney, licensed to practice law in the State  
3 of California. I am a partner in the law firm of Bowles & Moxon  
4 and am counsel of record for plaintiff and cross-defendant Church  
5 of Scientology International ("CSI") in this consolidated action.  
6 I have personal knowledge of the matters set forth herein and, if  
7 called upon to do so, could and would competently testify  
8 thereto.

9 2. On November 30, 1994, I received a letter from Ford  
10 Greene asking for a continuance of the hearing on plaintiff's  
11 pending Motion for Summary Adjudication for an unspecified  
12 duration. A true and correct copy of that letter is attached  
13 hereto as Exhibit A. I responded immediately, offering to  
14 stipulate to a brief continuance. A true and correct copy of my  
15 letter is attached as Exhibit B. On December 5, 1994, Mr. Greene  
16 responded that he intended to seek to have the hearing continued  
17 until February 24. A true and correct copy of this letter is  
18 attached hereto Exhibit C.

19 3. On March 16, 1993, Armstrong requested and obtained a  
20 stay in proceedings in the breach case, so that he could test  
21 Judge Sohigian's injunction upholding the validity of the  
22 settlement agreement at issue in this case ("the Agreement")  
23 before the First District Court of Appeal. At the time that  
24 Armstrong requested the stay, plaintiff had filed and served its  
25 Motion for Summary Adjudication etc., and Armstrong's opposition  
26 to that motion was due the next day.

27 4. The summary adjudication that was pending before the  
28 court in March 1993, when the stay was issued, differed very



1 little from the motion which is presently before this Court for  
2 adjudication on December 23, 1994. The primary difference in the  
3 two papers is that the first motion sought summary adjudication  
4 of 6 causes of action, and the presently-pending motion seeks  
5 summary adjudication of only 3 causes of action.

6 5. The motion set for hearing before this Court on  
7 December 23, 1994 was originally filed in Los Angeles Superior  
8 Court, and set for hearing on August 31, 1994. Armstrong agreed  
9 to transfer the Los Angeles case to Marin so that the cases could  
10 be tried together only if that motion was taken off calendar, and  
11 reset for hearing before this Court.

12 6. Although Armstrong and his lawyer agreed to cooperate  
13 with plaintiff to ensure that the move to Marin did not delay the  
14 progress of the case, they delayed and refused to cooperate with  
15 plaintiff's efforts to ensure that the file was promptly  
16 transferred to this Court.

17 7. Armstrong's attorney, Ford Greene, has been requesting  
18 that plaintiff delay discovery and other matters in this action  
19 for more than two months because of a claimed pending trial in  
20 the case of Simon v. Chakpori Ling Foundation. Attached hereto  
21 as Exhibit D are true and correct copies of letters which Mr.  
22 Greene sent me requesting delays. Mr. Greene represented that  
23 his trial would begin on October 28, 1994. He also represented  
24 that he would keep me informed as to its progress. Based on  
25 those representations, I agreed, on behalf of my client, to delay  
26 discovery and substantive matters during the month of November.  
27 Neither of the representations, however, proved to be true. Mr.  
28 Greene was not in trial in November, and he did not tell me that



1 his trial had been delayed for a month.

2 8. On December 5, 1994, I called the clerk of Dept. 7,  
3 Sonoma County Superior Court. The Simon trial is ongoing in  
4 Department 7. The Department 7 clerk informed me of the  
5 following facts: (1) The trial is not in session every Thursday,  
6 as the judge hears other matters; (2) The trial is scheduled to  
7 last until February 1, 1995; and (3) The trial will be not in  
8 session on December 22, 23 and the entire week of December 26.

9 9. Mr. Greene's co-counsel, Paul Morantz, has represented  
10 Armstrong in this case since April 18, 1992. Mr. Morantz is  
11 extremely knowledgeable concerning the matters at issue in the  
12 summary adjudication motion: he has joined Mr. Greene on the  
13 papers in this case for almost three years; he wrote some or all  
14 of the briefs for the Court of Appeal on this issues of the  
15 validity of the contract in question; and he appeared numerous  
16 times on Armstrong's behalf in motion practice before the  
17 Superior Court, including on demurrers and other significant  
18 motions; and he argued, with Mr. Greene, Armstrong's appeal to  
19 the 1st District.

20 10. Michael Flynn was Armstrong's attorney at the time  
21 Armstrong signed the contract at issue in this case. Armstrong  
22 contends that Flynn "coerced" him, at plaintiff's behest, into  
23 signing the contract. He made this identical argument to the  
24 Court of Appeal earlier this year. The Court of Appeal upheld  
25 Judge Sohigian's finding that "Armstrong voluntarily entered the  
26 settlement agreement for which he received substantial  
27 compensation. . . ." A true and correct copy of that decision is  
28 attached hereto as Exhibit E.



1           11. Armstrong repeated the argument to the Los Angeles  
2 Superior Court in opposing plaintiff's motion for summary  
3 judgment of his cross-claim. In granting plaintiff's motion, the  
4 Court said, "The Agreement terms are clear and unambiguous.  
5 [Armstrong] understood the terms and signed it. The duties and  
6 obligations of the Agreement are clearly stated. 'Mutuality' and  
7 'reciprocal' duties cannot be read into the unambiguous terms of  
8 the Agreement." A true and correct copy of this order is attached  
9 hereto as Exhibit F.

10           12. On November 18, 1994, Mr. Greene sent me a letter  
11 requesting a continuance of the hearing on plaintiff's presently-  
12 pending motion for summary adjudication in which he contended  
13 that he needed to take Flynn's deposition on "the issue of  
14 whether or not my client consented to the signing of the  
15 settlement contract" in order to oppose plaintiff's motion. A  
16 true and correct copy of Mr. Greene's letter is attached hereto  
17 as Exhibit G.

18           13. In April 1992, I issued a subpoena for Mr. Flynn's  
19 deposition, and scheduled it to take place in southern  
20 California. Mssrs. Greene and Morantz, by ex parte application,  
21 successfully prevented that deposition from going forward. A true  
22 and correct copy of the ex parte application which they filed is  
23 attached hereto as Exhibit H.

24           Executed this 6th day of December, 1994 at Los Angeles,  
25 California.

26  
27             
28           LAURIE J. BARTILSON







FORD GREENE  
LAWYER

HUB LAW OFFICES  
711 SIA FRANCIS DRAKE BOULEVARD  
SAN ANSELMO, CALIFORNIA 94960-1949  
(415) 268-0360

LICENSE No. 107601  
FACSIMILE (415) 456-5318

November 30, 1994

Laurie J. Bartilson  
BOWLES & MOXON  
6255 Sunset Boulevard, suite 2000  
Los Angeles, CA 90028

By Teletypewriter  
213-953-3351


RE: *Scientology v. Armstrong*  
Marin County Superior Court  
Case No. 157 680

---

Dear Laurie:

I am in the process of jury selection in Simon. I renew my request to continue the hearing date on your 437c motion.

If you do not cooperate, I will appear at 9:30 a.m. on December 1st, 1994, before Judge Thomas to seek the appropriate ex parte relief.

Sincerely,  
  
FORD GREENE

:aog  
cc: Andrew H. Wilson (by fax)





BOWLES & MOXON  
ATTORNEYS AT LAW  
6255 SUNSET BOULEVARD  
SUITE 2000  
HOLLYWOOD, CALIFORNIA 90028

TIMOTHY BOWLES \*  
KENDRICK L. MOXON #  
LAURIE J. BARTILSON †  
HELENA K. KOBRIN ‡

(213) 463-4395  
TELECOPIER (213) 953-3351

\* ALSO ADMITTED IN OREGON  
# ALSO ADMITTED IN THE DISTRICT OF  
COLUMBIA  
† ALSO ADMITTED IN MASSACHUSETTS  
‡ ALSO ADMITTED IN FLORIDA

November 30, 1994  
BY TELEFAX AND U.S. MAIL

Ford Greene, Esq.  
Hub Law Offices  
711 Sir Francis Drake Blvd.  
San Anselmo, California 94960-1949

Re: Church of Scientology International v. Gerald Armstrong  
LASC BC 052395

Dear Ford:

Thank you for your letter of today's date. I am unable to respond to your request, however, unless you provide me with a date to which you would like to continue the hearing on plaintiff's motion for summary adjudication.

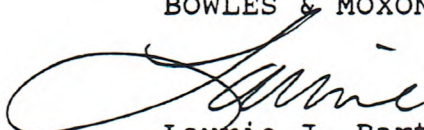
Kindly inform me promptly as to the length of the continuance you are seeking. It is possible that the parties will then be able to stipulate to a date that is satisfactory to all.

Additionally, I cannot tell from your letter what ex parte relief it is that you intend to seek. I remind you that if you do intend to go in ex parte, you are required to provide me with adequate notice of the specific relief you are seeking.

In any case, please advise me immediately as to the length of continuance that you are requesting. Plaintiff is of course willing to stipulate to a brief continuance, if necessary, while you are in trial.

Sincerely,

BOWLES & MOXON



Laurie J. Bartilson

LJB:aeu

cc: Andrew H. Wilson, Esq.  
Michael Lee Hertzberg, Esq.  
Paul Morantz, Esq.  
Michael Walton, Esq.



**EXHIBIT C**

FORD GREENE  
LAWYER

HUB LAW OFFICES  
711 SIR FRANCIS DRAKE BOULEVARD  
SAN ANSELMO, CALIFORNIA 94960-1949  
(415) 258-0360

LICENSE No. 107801  
FACSIMILE (415) 456-5318

December 5, 1994

Laurie J. Bartilson  
BOWLES & MOXON  
6255 Sunset Boulevard, Suite 2000  
Los Angeles, CA 90028

**By Telecopier**  
213-953-3351

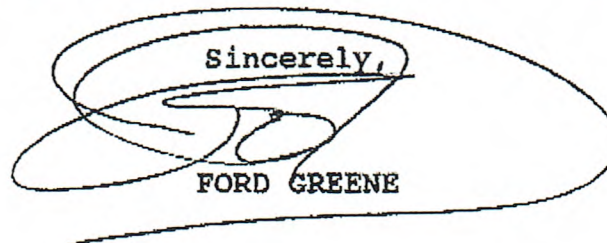
RE: *Scientology v. Armstrong*  
Marin County Superior Court  
Case No. 157 680

---

Dear Laurie:

The trial in Simon is proceeding and has been calendared to last through January. Thus, I propose February 24, 1995 as the date for the 437c hearing.

In anticipation of your rejection of this proposal, please be advised that I will seek an ex parte order on December 8th at 9:30 a.m. before Judge Thomas continuing the hearing on the basis that I am in a lengthy and on-going trial in Sonoma County.

Sincerely,  
  
FORD GREENE

:acg  
cc: Andrew H. Wilson





FORD GREENE  
LAWYER

HUB LAW OFFICES  
711 SIA FRANCIS DRAKE BOULEVARD  
SAN ANSELMO, CALIFORNIA 94960-1949  
(415) 288-0360

LICENSE No. 107601  
FACSIMILE (415) 456-5318

November 30, 1994

Laurie J. Bartilson  
BOWLES & MOXON  
6255 Sunset Boulevard, Suite 2000  
Los Angeles, CA 90028

By Telecopier  
213-953-3351

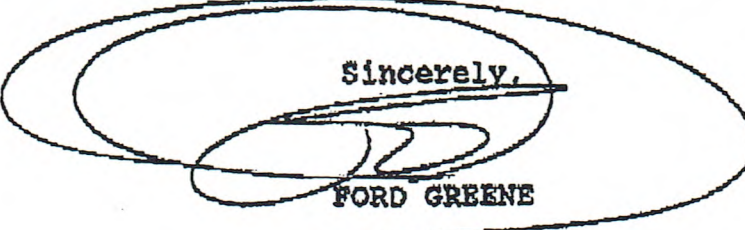
RE: *Scientology v. Armstrong*  
Marin County Superior Court  
Case No. 157 680

---

Dear Laurie:

I am in the process of jury selection in Simon. I renew my request to continue the hearing date on your 437c motion.

If you do not cooperate, I will appear at 9:30 a.m. on December 1st, 1994, before Judge Thomas to seek the appropriate ex parte relief.

Sincerely,  
  
FORD GREENE

:acg  
cc: Andrew H. Wilson (by fax)



FORD GREENE  
LAWYER

HUB LAW OFFICES  
711 SIR FRANCIS DRAKE BOULEVARD  
SAN ANSELMO, CALIFORNIA 94960-1949  
(415) 258-0360

LICENSE No. 107601  
FACSIMILE (415) 458-5318

November 18, 1994

Laurie J. Bartilson  
BOWLES & MOXON  
6255 Sunset Boulevard, Suite 2000  
Los Angeles, CA 90028

By Telecopier  
213-953-3351

RE: *Scientology v. Armstrong*  
Marin County Superior Court  
Case No. 157 680

---

Dear Laurie:

Yesterday my office received personal service of the motion for summary adjudication that you have set for December 23, 1994 at 9:00 a.m. As you know, I will be in trial all of that month. Thus, I am requesting your cooperation to reset the hearing so that I can have a reasonable opportunity to oppose the same. In addition, I want to take the deposition of Michael Flynn before the hearing because his testimony is central to the issue of whether or not my client consented to the signing of the settlement contract.

As to the deposition of Lawrence Wollersheim, I would like his deposition to proceed sometime after the first of the year (as you and I previously discussed) because I am unable to handle a trip to Colorado and being in trial at the same time. I have the same scheduling difficulties with respect to Ed Roberts and Denise Cantin and request the same consideration.

I look forward to hearing from you.

Sincerely,



FORD GREENE

:acg

FORD GREENE  
LAWYER

HUB LAW OFFICES  
711 SIR FRANCIS DRAKE BOULEVARD  
SAN ANSELMO, CALIFORNIA 94960-1949  
(415) 258-0360

LICENSE No. 107601  
FACSIMILE (415) 456-5318

November 8, 1994

Laurie J. Bartilson  
BOWLES & MOXON  
6255 Sunset Boulevard, Suite 2000  
Los Angeles, California 90028

By Telecopier  
213.953.3351

RE: *Church of Scientology International v. Armstrong*  
Los Angeles Superior Court  
Case No. BC 052 395

---

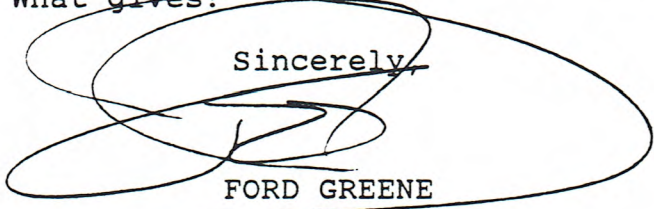
Dear Laurie:

Yesterday afternoon I received a message from you on my answering machine asking me to call you because there were some depositions that you wanted to set and you wanted to meet and confer with me regarding convenient dates. I returned your call, but was told that you had gone to the law library. Later in the afternoon, my office was personally served with a notice of deposition in Colorado for Lawrence Wollersheim for November 17th.

My trial in Simon starts on November 28th (Judge Watters having changed it). There is no way that I can or will go to Colorado on this short notice which violates the spirit, if not the letter, of our prior agreement that was designed not to have discovery in Armstrong interfere with my trial preparation in Simon. Furthermore, it is my understanding that Mr. Wollersheim is not available at any rate until after the 1st of the year which is the time period that you and I previously agreed would be when the Colorado depositions would proceed.

Please withdraw your notice for Mr. Wollersheim's deposition. Otherwise, I will have to seek a protective order and sanctions. This abrupt change in attitude is strange and disconcerting. What gives?

Sincerely,



FORD GREENE

:acg

cc: Andrew H. Wilson  
Michael L. Hertzberg  
Michael Walton



FORD GREENE  
LAWYER

HUB LAW OFFICES  
711 SIR FRANCIS DRAKE BOULEVARD  
SAN ANSELMO, CALIFORNIA 94960-1949  
(415) 258-0360

LICENSE No. 107601  
FACSIMILE (415) 455-5318

October 5, 1994

Laurie J. Bartilson  
BOWLES & MOXON  
6255 Sunset Boulevard, Suite 2000  
Los Angeles, California 90028

By Telecopier  
213.953.3351

RE: *Church of Scientology International v. Armstrong*  
Los Angeles Superior Court  
Case No. BC 052 395

---

Dear Laurie:

In response to your letter dated September 30, 1994, and further to our telephone conversation of October 3rd, I confirm the following:

1. Spanky Taylor's deposition commenced today at 10:00 a.m.
2. Vaughn Young's deposition will commence in Corona Del Mar on October 7, 1994 at 10:00 a.m.
3. Stacy Young's deposition will commence on October 18, 1994 at Andrew Wilson's office and each side will evenly split the costs of her round trip transportation from Seattle to San Francisco.
4. Gerald Armstrong's deposition shall commence on October 18th or 19th depending on the completion time of Stacy's deposition.
5. Jury selection in Simon will commence on October 28th with testimony anticipated to start on November 7th. No further depositions will be scheduled until trial is completed or the case is settled.

Sincerely,



FORD GREENE

:acg  
cc: Vaughn Young  
Stacey Young



FORD GREENE  
LAWYER

HUB LAW OFFICES  
711 SIR FRANCIS DRAKE BOULEVARD  
SAN ANSELMO, CALIFORNIA 94960-1949  
(415) 258-0360

LICENSE No. 107601  
FACSIMILE (415) 456-5318

September 28, 1994

Laurie J. Bartilson  
BOWLES & MOXON  
6255 Sunset Boulevard, Suite 2000  
Los Angeles, California 90028

By Telecopier  
213.993.4414

RE: *Church of Scientology International v. Armstrong*  
Los Angeles Superior Court  
Case No. BC 052 395

---

Dear Laurie:

This letter will confirm our telephone conversations of September 23, 1994 and September 26, 1994 regarding the scheduling of depositions in the above case.

On September 23 you advised me that your top priority was to finish the deposition of Gerald Armstrong and take and complete the depositions of Sylvia Taylor, Vaughn Young and Stacey Young. Ms. Taylor's deposition is set for 10:00 a.m. on October 5th and Vaughn Young's is set for 10:00 a.m. on October 7, 1994 at your offices in Los Angeles.

I advised you that I have a trial in Simon v. Chakpori Ling Foundation, Sonoma County Superior Court No. 175898 that will start on October 28, 1994 (the five-year statute is close to having expired) and that I did not want to get bogged down in a lot of Armstrong discovery during the time when I am preparing for trial. Thus, I wanted you to be prepared to commence Mr. Young's deposition on October 6th so that I would not waste a day sitting around in Los Angeles. I also told you that I would check with Mrs. Young regarding her deposition which must occur in the State of Washington. We both agreed to defer proceeding with the other depositions in Colorado and the United Kingdom until a later time.

On September 26, 1994, you and I spoke again on these matters and reiterated the above considerations. You advised me that you had to check with your client regarding changing Mr. Young's deposition to October 6th. I also asked you whether or not your client would be willing to pay one-half the cost to fly Mrs. Young to San Francisco, avoiding the requirement that we all have to travel to Seattle. You advised me that after checking with your clients, you would get back to me. Finally, we



Laurie J. Bartilson  
September 28, 1994  
Page 2.

---

By Telecopier

discussed the completion of Gerald's deposition which you estimated would involve one more day. After reviewing what you wanted, I told you that I would be inclined to cooperate in proceeding with four days of depositions in October if I had your agreement in writing that no other depositions would be scheduled in Armstrong until the completion of my trial in Simon.

Sincerely,



FORD GREENE

:acg

cc: Andrew H. Wilson  
Toby Plevin (by fax)  
Vaughn Young (by fax)  
Paul Morantz (by fax)

FORD GREENE  
LAWYER

HUB LAW OFFICES  
711 SIR FRANCIS DRAKE BOULEVARD  
SAN ANSELMO, CALIFORNIA 94960-1949  
(415) 258-0360

LICENSE No. 107601  
FACSIMILE (415) 456-5318

September 20, 1994

Laurie J. Bartilson  
BOWLES & MOXON  
6255 Sunset Boulevard, Suite 2000  
Los Angeles, California 90028

By Telecopier  
213.993.4414

RE: *Church of Scientology International v. Armstrong*  
Los Angeles Superior Court  
Case No. BC 052 395

---

Dear Laurie:

In response to your letter dated September 19, 1994, I have a problem with respect to the proposed dates. That is, I am set to commence a four to six week trial on October 28, 1994. In light of the fact that it is a five-year case that has been specially assigned for trial, it will go. Thus, the times that you have proposed clash with the time I need for preparation. In light of the fact that the trial date has now been continued, I would like to forebear from proceeding with the out of state depositions until after my trial.

Please advise me of your willingness to do this.

As to Denise Cantin, I confirm that I will produce her.

Sincerely,



FORD GREENE

:acg

cc: Andrew H. Wilson  
Michael Lee Hertzberg



FORD GREENE  
LAWYER

HUB LAW OFFICES  
711 SIR FRANCIS DRAKE BOULEVARD  
SAN ANSELMO, CALIFORNIA 94960-1949  
(415) 258-0360

LICENSE No. 107501  
FACSIMILE (415) 456-5318

August 17, 1994

Andrew H. Wilson  
WILSON, RYAN & CAMPILONGO  
235 Montgomery Street, Suite 450  
San Francisco, California 94104

By Telecopier  
415-954-0938

RE: *Scientology v. Armstrong*  
Marin County Superior Court  
Case No. 157 680

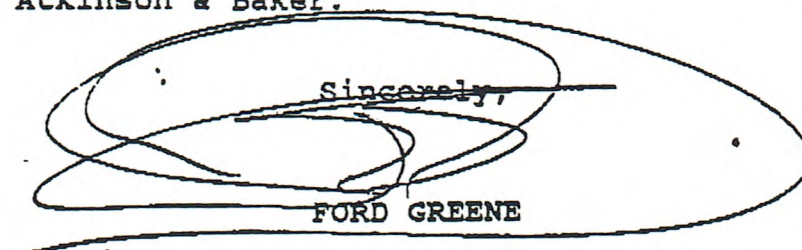
---

Dear Mr. Wilson:

In response to your letter dated August 17, 1994, I disagree that "we have not decided whether or not the summary judgment motion scheduled for August 31 will be heard before the motion to transfer is filed." My position has been and is that if the Los Angeles case is to be brought to Marin, that must occur as soon as possible and not after the summary judgment motion scheduled for August 31 is heard. Otherwise, it is my intention to proceed with the trial in the Marin Action as scheduled. Also, for the record, you and I have been discussing the transfer since at least Wednesday, August 10, and contemplating that the August 31 summary judgment hearing was not going to proceed.

In a separate but related matter, as to Gerald's deposition tomorrow, please remember that I will not proceed if the Court Reporter is Atkinson & Baker.

Sincerely,



FORD GREENE

:acg  
cc: Laurie J. Bartilson  
Michael Hertzberg





IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION FOUR

CHURCH OF SCIENTOLOGY INTERNATIONAL, )  
 )  
Plaintiff and Respondent, )  
 )  
v. )  
 )  
GERALD ARMSTRONG, )  
 )  
Defendant and Appellant. )  
\_\_\_\_\_ )

No. B069450  
(Super.Ct.No. BC052395)

COURT OF APPEAL - SECOND DISTRICT  
FILED  
JUN 14 1994

JOSEPH ...  
...

APPEAL from an order of the Superior Court of  
Los Angeles County, Ronald M. Sohigian, Judge. Affirmed.

Ford Greene and Paul Morantz for Defendant and  
Appellant.

Bowles & Moxon, Karen D. Holly, Wilson, Ryan &  
Campilongo, Andrew H. Wilson, Rabinowitz, Boudin, Standard,  
Krinsky & Lieberman, Eric M. Lieberman, and Michael Lee  
Hertzberg for Plaintiff and Respondent.

Defendant and appellant Gerald Armstrong (Armstrong) appeals from an order granting a preliminary injunction restraining Armstrong from voluntarily giving assistance to other persons litigating or intending to litigate claims against plaintiff and respondent Church of Scientology International (Church).

The injunction was granted to enforce a settlement agreement in prior litigation between Armstrong and Church. In the settlement, Armstrong agreed he would not voluntarily assist other persons in proceedings against Church.

Armstrong does not deny violating his agreement but asserts numerous reasons why his agreement should not be enforceable. We conclude that the narrowly-limited preliminary injunction, which did not finally adjudicate the merits of Armstrong's claims, was not an abuse of the trial court's discretion to make orders maintaining the status quo and preventing irreparable harm pending the ultimate resolution of the merits.

#### FACTUAL AND PROCEDURAL BACKGROUND

Armstrong was a member of Church between 1969 and 1981. He became an insider of high rank, familiar with Church practices and documents. He became disillusioned and left Church in 1981. When he left, he took many Church documents with him.



## The Prior Action and Settlement

Church brought the prior action against Armstrong seeking return of the documents, injunctive relief against further dissemination of information contained in them, and imposition of a constructive trust. Mary Sue Hubbard, wife of Church founder L. Ron Hubbard, intervened asserting various torts against Armstrong. Armstrong filed a cross-complaint seeking damages for fraud, intentional infliction of emotional distress, libel, breach of contract, and tortious interference with contract.

Church's complaint and Hubbard's complaint in intervention were tried in 1984 by Judge Breckenridge. That trial led to a judgment, eventually affirmed on appeal, holding Armstrong's conversion of the documents was justified because he believed the conversion necessary to protect himself from Church's claims that he had lied about Church matters and L. Ron Hubbard. (Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1063, 1073.)

Armstrong's cross-complaint in that case was settled in December 1986 by the settlement agreement which is the subject of the injunction in the present case.

In the settlement agreement, the parties mutually released each other from all claims, except the then-pending appeal of Judge Breckenridge's decision on Church's complaint, which was expressly excluded. The settlement involved a number

## The Present Action

In February 1992, Church filed a complaint in the present action alleging Armstrong's violation of the settlement agreement and seeking damages and injunctive relief.

In support of its motion for a preliminary injunction, Church presented evidence that since June 1991 Armstrong had violated the agreement by working as a paralegal for attorneys representing clients engaged in litigation against Church and by voluntarily and gratuitously providing evidence for such litigation. Armstrong worked as a paralegal for Attorney Joseph Yanny, who represented Richard and Vicki Aznaran in a multimillion dollar suit against Church in federal court. Armstrong also voluntarily provided declarations for use in the Aznarans' case. Armstrong thereafter worked for Attorney Ford Greene on the Aznaran and other Church related matters.

Armstrong did not deny the charged conduct but asserted the settlement agreement was not enforceable for various reasons, primarily that it was against public policy and that he signed it under duress.

## The Trial Court's Preliminary Injunction

The trial court granted a limited preliminary injunction, with exceptions which addressed Armstrong's



of persons engaged in litigation against Church, all represented by Attorney Michael Flynn. As a result of the settlement, Armstrong was paid \$800,000. Armstrong's cross-complaint was dismissed with prejudice, as agreed, on December 11, 1986.

The portions of the settlement agreement most pertinent to this appeal are paragraphs 7-G, 7-H, and 10, in which Armstrong agreed not to voluntarily assist other persons intending to engage in litigation or other activities adverse to Church.<sup>1/</sup>

---

1. "G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology. [¶] H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed. [¶] . . . 10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement."

Paragraph 20 of the agreement authorizes its enforcement by injunction.



argument that the settlement agreement violated public policy by requiring suppression of evidence in judicial proceedings.

The court found that Armstrong voluntarily entered the settlement agreement for which he received substantial compensation, and that Armstrong was unlikely to prevail on his duress claim. The court found that Armstrong could contract as part of the settlement to refrain from exercising various rights which he would otherwise have. Balancing the interim harms to the parties, the court found that to the extent of the limited acts covered by the preliminary injunction, Church would suffer irreparable harm which could not be compensated by monetary damages, and harm for which monetary damages would be difficult to calculate. (Code Civ. Proc., § 526, subds. (a)(2), (a)(4), (a)(5).)

The court's order provides, in pertinent part:

"Application for preliminary injunction is granted in part, in the following respects only. [¶] Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following: [¶] Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons



referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it. [¶] Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986."

The court provided the following exceptions to address Armstrong's public policy arguments: "The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order."

/

/

/

/

## DISCUSSION

The grant of a preliminary injunction does not adjudicate the ultimate rights in controversy between the parties. It merely determines that the court, balancing the relative equities of the parties, concludes that, pending a trial on the merits, the defendant should be restrained from exercising the right claimed. The purpose of the injunction is to preserve the status quo until a final determination of the merits of the action. (Continental Baking Co. v. Katz (1968) 68 Cal.2d 512, 528.)

The court considers two interrelated factors. The first is the likelihood the plaintiff will prevail at trial. The second is the interim harm the plaintiff is likely to sustain if the injunction is denied, as compared to the harm the defendant is likely to suffer if the injunction is granted. (Cohen v. Board of Supervisors (1985) 40 Cal.3d 277, 286.)

The decision to grant or deny a preliminary injunction rests in the discretion of the trial court. Accordingly, an appellate court's review on appeal from the granting of a preliminary injunction is very limited. The burden is on the appellant to make a clear showing that the trial court abused its discretion. (IT Corp. v. County of Imperial (1983) 35 Cal.3d 63, 69; Nutro Products, Inc. v. Cole Grain Co. (1992) 3



Cal.App.4th 860, 865.) Abuse of discretion means the trial court has exceeded the bounds of reason or contravened the uncontradicted evidence. (IT Corp. v. County of Imperial, supra, 35 Cal.3d at p. 69.)

Here, the trial court's memorandum decision reflects very careful consideration of the factors relevant to the granting of a preliminary injunction. The court weighed the relative harms to the parties and balanced the interests asserted by Armstrong. The court granted a limited preliminary injunction with exclusions protecting the countervailing interests asserted by Armstrong. We find no abuse of discretion. We cannot say that the trial court erred as a matter of law in weighing the hardships or in determining there is a reasonable probability Church would ultimately prevail to the limited extent reflected by the terms of the preliminary injunction.

Although Armstrong's "freedom of speech" is affected, it is clear that a party may voluntarily by contract agree to limit his freedom of speech. (See In re Steinberg (1983) 148 Cal.App.3d 14, 18-20 [filmmaker agreed to prior restraint on distribution of film]; ITT Telecom Products Corp. v. Dooley (1989) 214 Cal.App.3d 307, 319 [employee's agreement not to disclose confidential information; "it is possible to waive even First Amendment free speech rights by contract"]; Snepp v. United States (1980) 444 U.S. 507, 509, fn. 3 [book by CIA



employee subject to prepublication clearance by terms of his employment contract].)

The exceptions in the trial court's injunction assured that the injunction would not serve to suppress evidence in legal proceedings. The injunction expressly did not restrain Armstrong from accepting service of subpoenas, testifying fully and fairly in legal proceedings, and reporting criminal conduct to the authorities. (See Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian (1990) 218 Cal.App.3d 1058, 1081-1082.) This contrasts with the stipulation in Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d 308, 315-316, cited by Armstrong, which prevented a party from disclosing misconduct to regulatory authorities.

This appeal is only from the granting of a preliminary injunction which expressly did not decide the ultimate merits. As limited by the trial court here, the preliminary injunction merely restrains, for the time being, Armstrong's voluntary intermeddling in other litigation against Church, in violation of his own agreement. We decline any extended discussion of Armstrong's shotgun-style brief, which offers more than a dozen separate contentions against enforcement. It suffices to say that Armstrong has not borne his burden on appeal to demonstrate a clear abuse of discretion.

DISPOSITION

The order granting a preliminary injunction is affirmed.

NOT TO BE PUBLISHED

VOGEL (C.S.), Acting P.J.

We concur:

HASTINGS, J.

KLEIN (Brett), J.\*

---

\*Assigned by the Chairperson of the Judicial Council.



OFFICE OF THE CLERK  
COURT OF APPEALS  
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT  
JOSEPH A. LANE, CLERK

DIVISION: 4 DATE: 05/16/94

Bowles & Moxon  
Laurie J. Bartilson  
6255 Sunset Blvd  
Suite 2000  
Hollywood, CA. 90028

RE: Church of Scientology International  
vs.  
Armstrong, Gerald  
2 Civil B069450  
Los Angeles NO. BC052395





SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: August 16, 1994

Honorable	DAVID A. HOROWITZ	, Judge	S. ROBLES	, Deputy Clerk
2	C. AGUIRRE	, Deputy Sheriff	LINDA NISHIMOTO #9147	, Reporter
		, C.S.L.		, E/R Monitor

BC052395

(Parties and Counsel checked if present)

CHURCH OF SCIENTOLOGY, ETC

Counsel for Plaintiff

MICHAEL LEE HERTZBERG (x)  
LAURIE J. BARTILSON (x)

VS

GERALD ARMSTRONG, ET AL

Counsel for Defendant

FORD GREENE (x)

NO LEGAL FILE

NATURE OF PROCEEDINGS:

**MOTION BY CROSS-DEFENDANT, CHURCH OF SCIENTOLOGY INTERNATIONAL, FOR SUMMARY ADJUDICATION OF THE SECOND AND THIRD CAUSES OF ACTION OF THE CROSS-COMPLAINT;**

Motion for Summary Adjudication of a Cause of Action (SACA) GRANTED. No triable issues of material facts. The 2nd and 3rd Causes of Action have no merit. CCP 437c(f)(1).

3rd Cause of Action - Breach of Contract.

Undisputed Facts: #1-9, essentially Undisputed, Cross-Defendant has accurately described the provisions of the Agreement; #10, not sufficiently disputed, Undisputed; #11, Undisputed; #12, not sufficiently disputed, Undisputed; #13, Undisputed; #14, Undisputed; #15, not sufficiently disputed, Undisputed; #16, Undisputed.

The Agreement terms are clear and unambiguous. Cross-Complainant understood the terms and signed it. The duties and obligations of the Agreement are clearly stated. "Mutuality" and "reciprocal" duties cannot be read into the unambiguous terms of the Agreement.

There are no provisions in the Agreement prohibiting the Cross-Defendant from referring to Cross-Complainant with the press or in legal pleadings or declarations. Cross-Complainant's beliefs as to what the Agreement should have said, it's validity, or what his attorney said or did to him are not relevant. The Agreement itself acknowledges that no agreements or understandings have been made among the parties aside from those set forth in the Agreement.

2nd Cause of Action - Abuse of Process.

Undisputed Facts: #17, not sufficiently disputed, Undisputed; #18, not sufficiently disputed, Undisputed; #19, Disputed; #20, Disputed, not material; #21, not sufficiently disputed, Undisputed; #22, Undisputed; #23, Disputed as to time discovered by Church counsel; #24,



SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: August 16, 1994

Honorable	DAVID A. HOROWITZ	, Judge	S. ROBLES	, Deputy Clerk
2a	C. AGUIRRE	, Deputy Sheriff	LINDA NISHIMOTO #9147	, Reporter
		, C.S.L.		, E/R Monitor

BC052395

(Parties and Counsel checked if present)

CHURCH OF SCIENTOLOGY, ETC

Counsel for Plaintiff

MICHAEL LEE HERTZBERG (x)  
LAURIE J. BARTILSON (x)

VS

GERALD ARMSTRONG, ET AL

Counsel for Defendant

FORD GREENE (x)

NO LEGAL FILE

NATURE OF PROCEEDINGS:

disputed as to motivation, otherwise Undisputed; #25, not sufficiently disputed, Undisputed; #26, Undisputed; #27, disputed as to word "further", otherwise Undisputed; #28, Disputed, but not material; #29, Undisputed; #30, Undisputed that Marin Court granted a motion to Transfer; #31, Undisputed, except for term "irreparably harmed; #32, Undisputed; #33, Undisputed; #34, not sufficiently disputed, Undisputed; #35, Undisputed.

A One Year Statute of Limitations applies to an Abuse of Process cause of action. Code of Civil Procedure Section 340. Conduct allegedly occurring prior to July 22, 1991 is precluded by the one year Statute. Conduct alleged in paragraphs 13-24, 26 and 27, 29 and 30, 33-38, 40, 43-48 and para 57 are alleged to have occurred before 7/22/91 and are time barred.

The alleged conduct constituting "abuse of process" contained in paragraphs 49, 51, 52 and 55 does not constitute such abuse of process. That is, there are no allegations concerning the abuse of court process which constitutes a cause of action.

Communications with "some relation" to judicial proceedings have been absolutely immune from tort liability by the privilege codified as section 47(b). Albertson v. Raboff.

The alleged conduct of bringing suit, contained in paragraphs 53 and 54, is not sufficient to state a cause of action for "abuse of process. The filing or maintaining of a lawsuit cannot support a claims for abuse of process. The filing of a suit to enforce the Settlement Agreement cannot support claims for abuse of process.

The conduct alleged in para 50, ie, the filing of a complaint and the use of a declaration speaking of Cross-Complainant, does not constitute abuse of process and is privileged.

Paragraph 52 alleged conduct relating to declarations filed in a case in which the Cross-Complainant is not a party. Such conduct does not constitute abuse of process and is privileged.



SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: August 16, 1994

Honorable DAVID A. HOROWITZ , Judge  
2b C. AGUIRRE , Deputy Sheriff  
, C.S.L.

S. ROBLES , Deputy Clerk  
LINDA NISHIMOTO #9147 , Reporter  
, E/R Monitor

BC052395

(Parties and Counsel checked if present)

CHURCH OF SCIENTOLOGY, ETC

Counsel for  
Plaintiff

MICHAEL LEE HERTZBERG (x)  
LAURIE J. BARTILSON (x)

VS

GERALD ARMSTRONG, ET AL

Counsel for  
Defendant

FORD GREENE (x)

NO LEGAL FILE

NATURE OF PROCEEDINGS:

MOTION FOR SUMMARY ADJUDICATION OF SECOND AND THIRD CAUSES OF ACTION OF THE CROSS-COMPLAINT OF GERALD ARMSTRONG, GRANTED.

David A. Horowitz

DAVID A. HOROWITZ, JUDGE

This is the order called for by Code of Civil Procedure Section 437c(f) and Code of Civil Procedure Section 437c(g). No other written order is required.

A copy of this order is sent this date via U.S. Mail addressed as follows:

MICHAEL LEE HERTZBERG  
ATTORNEY AT LAW  
740 BROADWAY 5TH FL  
NEW YORK NY 10003

LAURIE J. BARTILSON  
BOWLES & MOXON  
6255 SUNSET BLVD STE 2000  
HOLLYWOOD CA 90028

FORD GREENE  
HUB LAW OFFICES  
711 SIR FRANCIS DRAKE BLVD  
SAN ANSELMO CA 94960





FORD GREENE  
LAWYER

HUB LAW OFFICES  
711 SIR FRANCIS DRAKE BOULEVARD  
SAN ANSELMO, CALIFORNIA 94960-1949  
(415) 258-0360

LICENSE No. 107601  
FACSIMILE (415) 456-5318

November 18, 1994

Laurie J. Bartilson  
BOWLES & MOXON  
6255 Sunset Boulevard, Suite 2000  
Los Angeles, CA 90028

By Telecopier  
213-953-3351

RE: *Scientology v. Armstrong*  
Marin County Superior Court  
Case No. 157 680

---

Dear Laurie:

Yesterday my office received personal service of the motion for summary adjudication that you have set for December 23, 1994 at 9:00 a.m. As you know, I will be in trial all of that month. Thus, I am requesting your cooperation to reset the hearing so that I can have a reasonable opportunity to oppose the same. In addition, I want to take the deposition of Michael Flynn before the hearing because his testimony is central to the issue of whether or not my client consented to the signing of the settlement contract.

As to the deposition of Lawrence Wollersheim, I would like his deposition to proceed sometime after the first of the year (as you and I previously discussed) because I am unable to handle a trip to Colorado and being in trial at the same time. I have the same scheduling difficulties with respect to Ed Roberts and Denise Cantin and request the same consideration.

I look forward to hearing from you.

Sincerely,



FORD GREENE

:acg





1 HUB LAW OFFICES  
 2 Ford Greene, Esquire  
 3 California State Bar No. 107601  
 4 711 Sir Francis Drake Boulevard  
 5 San Anselmo, California 94960-1949  
 6 Telephone: (415) 258-0360

7 PAUL MORANTZ, ESQ.  
 8 P.O. Box 511  
 9 Pacific Palisades, CA 90272  
 10 (213) 459-4745

11 Attorney for Defendant  
 12 GERALD ARMSTRONG

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 14 IN AND FOR THE COUNTY OF LOS ANGELES

15 CHURCH OF SCIENTOLOGY )  
 16 INTERNATIONAL, a California )  
 17 not-for-profit religious )  
 18 corporation; )

19 Plaintiffs, )

20 vs. )

21 GERALD ARMSTRONG; DOES 1 )  
 22 through 25, inclusive, )

23 Defendants. )

No. BC 052395

NOTICE OF MOTION AND MOTION  
 TO QUASH DEPOSITION SUBPOENA  
 FOR MICHAEL J. FLYNN;  
 DECLARATION OF COUNSEL;  
 MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF

Date: 6-4-92  
 Time: 8:30 a.m.  
 Dept: 30  
 Trial Date: None  
 Discovery Cut Off: None

24 TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

25 PLEASE TAKE NOTICE that on the 4<sup>th</sup> day of June,  
 26 1992, at 8:30 a.m., or as soon thereafter as the matter may be  
 27 heard in Department 30 of the above-entitled Court, Defendant  
 28 GERALD ARMSTRONG will move for an Order quashing the Deposition  
 Subpoena that was served on third-party witness Michael J. Flynn.  
 Further ARMSTRONG will seek an Order compelling plaintiff CHURCH


1 OF SCIENTOLOGY INTERNATIONAL and its attorneys, Wilson, Ryan and  
2 Campilongo and Bowles and Moxon to pay monetary sanctions for  
3 requiring ARMSTRONG to bring the instant motion.

4 As to the motion to quash, this motion is brought pursuant to  
5 Code of Civil Procedure section 2025 (g) on the ground that notice  
6 of said deposition was served by mail and was less than required  
7 by Code of Civil Procedure sections 1013 (a) and 2025 (f).

8 As to the motion for sanctions, this motion is brought  
9 pursuant to Code of Civil procedure sections 2023 and 2025 (g).

10 This motion is based upon the instant Notice, the Declaration  
11 of Counsel submitted herewith and the Memorandum of Points and  
12 Authorities In Support filed herewith, and the court's files and  
13 records in this case.

14 DATED: May 11, 1992

15  
16 BY:   
17 FORD GREENE and PAUL MORANTZ  
18 Attorneys for Defendant  
19 GERALD ARMSTRONG  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 HUB LAW OFFICES  
 Ford Greene, Esquire  
 2 California State Bar No. 107601  
 711 Sir Francis Drake Boulevard  
 3 San Anselmo, California 94960-1949  
 Telephone: (415) 258-0360

4  
 5 PAUL MORANTZ, ESQ.  
 P.O. Box 511  
 Pacific Palisades, CA 90272  
 6 (213) 459-4745

7 Attorney for Defendant  
 GERALD ARMSTRONG  
 8  
 9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 11 IN AND FOR THE COUNTY OF LOS ANGELES  
 12

13 CHURCH OF SCIENTOLOGY )  
 14 INTERNATIONAL, a California )  
 not-for-profit religious )  
 15 corporation; )

16 Plaintiffs, )

17 vs. )

18 GERALD ARMSTRONG; DOES 1 )  
 through 25, inclusive, )

19 Defendants. )  
 20 )

No. BC 052395

MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 MOTION TO QUASH DEPOSITION OF  
MICHAEL J. FLYNN

Date:  
 Time:  
 Dept:  
 Trial Date: None  
 Discovery Cut Off: None

21 I. INTRODUCTION

22 The motion to quash should be granted because plaintiff  
 23 failed to comply with the statutory requirement that when a  
 24 deposition notices is served by mail, 15 days notice is required.

25 On May 1, 1992, plaintiff served by mail its NOTICE OF TAKING  
 26 THE DEPOSITION OF MICHAEL J. FLYNN; DEPOSITION SUBPENNA (Exhibit A  
 27 to Declaration of Counsel). Said Notice of Deposition purported  
 28



1 to set the deposition of Michael J. Flynn on May 12, 1992, and  
2 failed to notice said deposition for an specific time.

3 On May 7, 1992, Defendant ARMSTRONG timely and personally  
4 served his NOTICE OF OBJECTIONS TO DEPOSITION OF MICHAEL J. FLYNN  
5 on the office of Andrew H. Wilson, attorney for plaintiff.  
6 (Exhibit B to Declaration of Counsel).

7 On May 8, 1992, Laurie J. Bartilson, attorney for Plaintiff,  
8 wrote defense counsel and stated "The deposition has been set for  
9 the date in question to accommodate the witness, and will not be  
10 continued. If you choose not to attend, it is of course at your  
11 own peril." (Exhibit C to Declaration of Counsel)

12 On May 11, 1992, defense counsel Greene telephoned  
13 plaintiff's counsel Laurie J. Bartilson in an effort to meet and  
14 confer regarding the scheduling of the deposition of Michael J.  
15 Flynn, left a message to that effect with her secretary and a  
16 requested that she return his telephone call. Ms. Bartilson did  
17 not do so.

18 LEGAL ARGUMENT

19 II. The Motion To Quash Should Be Granted;  
20 The Deposition Is Stayed Pending A Determination Thereon

21 It is elementary that when a deposition notice is served by  
22 mail, 15 days notice must be provided. (C.C.P. §§ 2025 (f), 1013  
23 (a).) In the case of the notice of the Flynn deposition, 11 days  
24 notice was provided because the notice was served by mail on May 1  
25 which noticed the deposition for May 12.

26 On May 7, pursuant to Code of Civil procedure section 2025  
27 (g) defendant timely and personally served his notice of  
28 objections on plaintiff's counsel Wilson. Said objections were



1 predicated upon two grounds: (1) the lack of adequate notice and  
2 (2) the failure to state a time in the notice of deposition.

3 Code of Civil Procedure section 2025 (g) specifically  
4 authorizes a party to bring a motion to quash a deposition on the  
5 ground that inadequate notice has been given as required by Code  
6 of Civil procedure sections 2025 (f) and 1013 (a). In such case  
7 "The taking of the deposition is stayed pending the determination  
8 of this motion." (C.C.P. § 2025 (g).)

9 **III. MONETARY SANCTIONS SHOULD BE AWARDED**

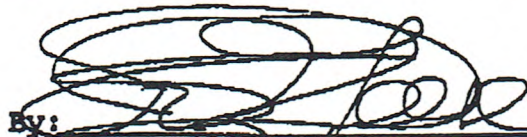
10 C.C.P. sections 2023 and 2025 authorizes an award of monetary  
11 sanctions against any party or attorney who unsuccessfully makes  
12 or opposes a motion to quash a deposition notice.

13 In this case, defendant timely served his objections in  
14 response to which plaintiff's counsel Bartilson stated that the  
15 deposition would not be continued. Although defense counsel  
16 Greene telephoned Bartilson in an effort to develop an alternative  
17 to the instant motion, she chose not to return his call.

18 **CONCLUSION**

19 Based upon all of the foregoing, defendant ARMSTRONG  
20 respectfully submits that Court grant his motion to quash the  
21 Deposition Subpoena of Michael J. Flynn and Order the payment of  
22 reasonable monetary sanctions.

23 DATED: May 11, 1992

24   
By: **PAUL MORANTZ and FORD GREENE**  
Attorneys for Defendant  
**GERALD ARMSTRONG**

25  
26  
27  
28